IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Crl.M. No.33041-M of 2007

Date of Decision: 28.5.2007

Ajay Masih

....Petitioner.

Versus

State of Punjab.

...Respondent.

Present:- Mr.P.P.S.Duggal,Advocate
for the petitioner.

Mr.IPS Sidhu, Sr.DAG Punjab.

****

S.S.SARON, J.(ORAL)

Heard learned counsel for the parties.

The FIR has been registered on the statement of Bhoot Nath, the father of the deceased Raj Kumar. Raj Kumar was married with Seema about 4 ½ years earlier. About a year back son of the complainant namely Raj Kumar had a doubt that the petitioner and Seema were having an affair and so he stopped Seema from meeting the petitioner. In this regard there was a quarrel between the son and daughter-in-law of the complainant. The matter was settled in the Panchayat. On 31.12.2006 at about 10:00 a.m. Seema the daughter-in-law of the complainant along with petitioner came to the house of the complainant and asked her husband Raj Kumar that as the matter had been compromised they would celebrate the New Year. The son of the complainant went with the petitioner and Seema and did not return for two days. The complainant alleged that his daughter-in-law Seema and petitioner has kidnapped his son with an intention to kill him.

Learned counsel for the petitioner has submitted that a perusal of the report dated 1.3.2007 (Annexure P3) of the Chemical Examiner shows that no poison was detected in the contents of exhibits which were sent to the chemical examiner. He further submits that there is nothing on record against the petitioner to connect him with the disappearance of the Raj Kumar, the son of the complainant. Learned counsel for the petitioner has further submitted that a letter dated 16.1.2007 had been sent by the Medical Officer, Civil Hospital Malout (Muktsar) along with the report of the Chemical Examiner for final opinion of the Forensic Science Department, Guru Gobind Singh Medical College, Faridkot. However, the report of the Forensic Science Department is not being produced by the prosecution.

In response learned counsel for the State has submitted that it is on the disclosure statement of Seema that the dead body of Raj Kumar was recovered. It is further submitted that the petitioner is not joining the investigation and his custody is required for unearthing the actual circumstances leading to the death of Raj Kumar. Besides, the petitioner was last seen with deceased Raj Kumar. It is submitted that the report of the Forensic Science Department has not been received but would be considered as and when received.

I have given my thoughtful consideration to the matter. The custody of the petitioner is required as he is accused of having committed the offence under Section 302 IPC. There are allegations that he had an affair with Seema, the daughter-in-law of the complainant. The petitioner was last seen with the deceased Raj Kumar. The fact that no poison has

been detected is hardly of any significance at this stage. Even the report of the Forensic Science Department not being produced is not of much relevance at present. The custody of the petitioner is required so as to get to know the actual position. It is well known that considerations governing the court's decision on an application seeking p re-arrest bail are materially different from that seeking regular bail or for that matter even seeking suspension of sentence during the pendency of an appeal before the higher Court. In a case of pre-arrest bail the advantage of custodial interrogation to elicit more and useful information is to be kept in view. The present is a case in which the petitioner is accused of an offence punishable under Section 302 IPC. Learned counsel for the State has also submitted that proclaimed offender proceedings have been initiated against the petitioner.

In the circumstances, no ground for pre-arrest bail is made out.

Dismissed.

(S.S.SARON)
JUDGE

May 28,2007
Reema